



September 27, 2000

Mr. Wiley B. McAfee
Police Legal Advisor
Irving Police Department
P.O. Box 152288
Irving, Texas 75015-2288

OR2000-3732

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139470.

The City of Irving (the "city") received a request for all information held by the Irving Police Department relating to a specific individual in connection with a specific sexual assault allegation and in regard to any other investigation of which the individual is the subject. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as Family Code section 261.201(a). The relevant language of that statute reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted records relate to an allegation of sexual assault of a child. Therefore, these records fall within the scope of section 261.201 of the Family Code. Accordingly, the city must withhold the records in their entirety pursuant to section 261.201 of the Family Code as encompassed by section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).² Because section 261.201, as encompassed by section 552.101, is dispositive of this matter, it is not necessary to address your claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹We assume that the city has not adopted any rules that would permit access to the requested information.

²We note, however, that if the Texas Department of Protective and Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that department's file. *See* Fam. Code § 261.201(f).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 139470

Encl: Submitted documents

cc: Mr. Steven Clary
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(w/o enclosures)